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INSTRUCTIONS

RELATIVE TO

TOWN-SITES ON PUBLIC LANDS.

(Not applicable to Alaska.)

GENERAL LAND OFFICE,

JULY 9, 1886.

[Misc. pub.]
REPRINT.



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INTERIOR DEPARTMENT,
GENERAL LAND OFFICE,
Washington, D. C., June 22, 1899.

This circular is reissued for the information and benefit of those concerned.

BINGER HERMANN,
Commissioner.

Approved:
THOS. RYAN,
Acting Secretary.

CIRCULAR

RELATING TO

MANNER OF ACQUIRING TITLE TO TOWN-SITES ON PUBLIC LANDS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 9, 1886.

REGISTERS AND RECEIVERS,
United States Land Offices :

GENTLEMEN: There are three methods by which title may be acquired to public lands for town-site purposes: one provided for in sections 2380 and 2381; another in sections 2382, 2383, 2384, 2385, and 2386; and the third in sections 2387, 2388, and 2389, United States Revised Statutes.

I.

Section 2380 authorizes the President to reserve public lands for town-site purposes on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population. Section 2381 provides for the survey of such reservation into urban or suburban lots, the appraisalment of the same, and the sale thereof at public outcry; the lots remaining unsold are thereafter to be disposed of at public sale or private entry, at not less than the appraised value thereof.

II.

Sections 2382, 2383, 2384, 2385, and 2386, Revised Statutes (act 3d March, 1863, 12 Stat., 754; act 3d March, 1865, 13 Stat., 530), limit the extent of the area of the city or town which may be entered under said acts to 640 acres, to be laid off in lots, which, after filing in this office the statement, transcripts, and testimony required by section 2383, are to be offered at public sale to the highest bidder at a minimum of \$10 for each lot.

An actual settler upon any one lot may pre-empt that lot, and any additional lot on which he may have substantial improvements, at said minimum at any time before the day of sale. Such person must furnish pre-emption proof showing residence and improvement upon the original lot and improvement upon additional lot, after the usual notice of intention by publication.

Lots not disposed of at time of public sale are thereafter subject to private entry at such minimum or at such reasonable price as the

Secretary of the Interior may order from time to time, after at least three months' notice, as the municipal property may increase or decrease in value.

The preliminaries required by this method are:

1. Parties having founded or who desire to found a city or town on the public lands, under the provisions of sections 2382, 2383, 2384, 2385, and 2386, must file with the recorder of the county in which the land is situate a plat thereof, describing the exterior boundaries of the land according to the lines of public surveys, where such surveys have been made.

2. Such plat must state the name of the city or town, exhibit the streets, squares, blocks, lots, and alleys, and specify the size of the same, with measurements and area of each municipal subdivision, the lots in which shall not exceed 4,200 square feet, with a statement of the extent and general character of the improvements.

3. The plat and statement must be verified by the oath of the party acting for and in behalf of the occupants and inhabitants of the town or city.

4. Within one month after filing the plat with the recorder of the county a verified copy of said plat and statement must be sent to the General Land Office, accompanied by the testimony of two witnesses that such town or city has been established in good faith.

5. Where the city or town is within the limits of an organized land district a similar map and statement must be filed with the register and receiver. The exterior boundary lines of the town, if upon the land over which Government surveys have not been extended, may, when such surveys are so extended, be adjusted according to those lines, where it can be done without impairing vested rights.

6. In case the parties interested shall fail or refuse, within twelve months after founding a city or town, to file in the General Land Office a transcript map, with the statement and testimony called for by section 2382, the Secretary of the Interior may cause a survey and plat to be made of said city or town, and thereafter the lots will be sold at an increase of 50 per cent. on the minimum price of \$10 per lot.

7. When lots vary in size from the limitation fixed in section 2382 (4,200 square feet), and the lots, buildings, and improvements cover an area greater than 640 acres, such variance as to size of lots or excess in area will prove no bar to entry, but the price of the lots may be increased to such reasonable amount as the Secretary may by rule establish.

8. Title to be acquired to town lots embracing mineral entries is subject to recognized possession and necessary use for mining purposes, as provided in section 2386.

III.

Lands actually settled upon and occupied as a town-site, and therefore not subject to entry under the agricultural pre-emption laws, may be entered as a town-site, in accordance with the provisions of sections 2387, 2388, and 2389, United States Revised Statutes. (Act March 2, 1867, 14 Stat., 541; act March 3, 1877, 19 Stat., 392.)

1. If the town is incorporated, the entry may be made by the corporate authorities thereof through the mayor or other principal officer duly authorized so to do.

2. If the town is not incorporated, the entry may be made by the judge of the county court for the county in which said town is situated.

3. In either case the entry must be made in trust for the use and benefit of the occupants thereof, according to their respective interests.

4. The execution of such trust as to the disposal of lots and the proceeds of sales is to be conducted under regulations prescribed by state or territorial laws. Acts of trustees not in accordance with such regulations are void.

5. Private individuals or organizations are not authorized to enter town-sites under this act, nor can entries under this act be made of prospective town-sites. The town must be actually established, and the entry must be for the benefit of the actual inhabitants and occupants thereof.

6. The officer authorized to enter a town-site may make entry at once, or he may initiate an entry by filing a declaratory statement of the purpose of the inhabitants to make a town-site entry of the land described.

7. The entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States, and, if upon surveyed lands, its exterior limits must conform to the legal subdivisions of the public lands.

8. The amount of land that may be entered under this act is proportionate to the number of inhabitants. One hundred and less than two hundred inhabitants may enter not to exceed 320 acres; two hundred and less than one thousand inhabitants may enter not to exceed 640 acres; and where the inhabitants number one thousand and over an amount not to exceed 1,280 acres may be entered; and for each additional one thousand inhabitants, not to exceed five thousand in all, a further amount of 320 acres may be allowed.

9. When the number of inhabitants of a town is less than one hundred the town-site shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

10. Where an entry is made of less than the maximum quantity of land allowed for town-site purposes, additional entries may be made of contiguous tracts occupied for town purposes, which, when added to the previous entry or entries, will not exceed 2,560 acres; but no additional entry can be allowed which will make the total area exceed the area to which the town may be entitled by virtue of its population at date of additional entry.

11. The land must be paid for at the Government price per acre, and proof must be furnished relating—

- 1st, To municipal occupation of the land;
- 2d, Number of inhabitants;
- 3d, Extent and value of town improvements;
- 4th, Date when land was first used for town-site purposes;
- 5th, Official character and authority of officer making entry; and
- 6th, If an incorporated town, proof of incorporation, which should be a certified copy of the act of incorporation.

12. Thirty days' publication of notice of intention to make proof must be made and proof of publication furnished.

13. Title cannot be acquired under this act to mines of gold, silver, cinnabar, or copper, nor to any valid mining claim or possession. A non-mineral affidavit is required in all states and territories except Florida, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, and Wisconsin.

14. A greater quantity of land than 2,560 acres is not excluded from pre-emption or homestead entry because of town-site reservations unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

15. If the corporate limits of a town are in excess of the maximum area authorized to be entered as a town-site, the proper quantity may be set off, as provided in section 3 of the act of March 3, 1877, and the residue be open to disposal under the homestead and pre-emption laws.

Very respectfully,

WM. A. J. SPARKS,
Commissioner.

Approved:

L. Q. C. LAMAR,
Secretary.

NOVEMBER 5, 1886.

LAWS RELATING TO TOWN-SITES.

RESERVATION AND SALE OF TOWN-SITES ON THE PUBLIC LANDS.

SECTION 2380. The President is authorized to reserve from the public lands, whether surveyed or unsurveyed, town-sites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population.

Town-sites to be reserved.
3 March, 1863, c. 80, s. 1, v.
12, p. 754.

SEC. 2381. When, in the opinion of the President, the public interests require it, it shall be the duty of the Secretary of the Interior to cause any of such reservations, or part thereof, to be surveyed into urban or suburban lots of suitable size, and to fix by appraisement of disinterested persons their cash value, and to offer the same for sale at public outcry to the highest bidder, and thence afterward to be held subject to sale at private entry according to such regulations as the Secretary of the Interior may prescribe; but no lot shall be disposed of at public sale or private entry for less than the appraised value thereof; and all such sales shall be conducted by the register and receiver of the land office in the district in which the reservation may be situated, in accordance with the instructions of the Commissioner of the General Land Office.

Reservations to be surveyed into lots.
3 March, 1863, c. 80, s. 2,
v. 12, p. 754.

SEC. 2382. In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the recorder for the county in which the same is situated a plat thereof, for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of an organized land district, a similar map and statement shall be filed with

Town or city sites in public lands.
1 July, 1864, c. 205, s. 2,
v. 13, p. 343.

the register and receiver, and at any time after the filing of such map, statement, and testimony in the General Land Office it may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property. But any actual settler upon any lot, as above provided, and upon any additional lot in which he may have substantial improvements, shall be entitled to prove up and purchase the same as a pre-emption, at such minimum, at any time before the day fixed for the public sale.

SEC. 2383. When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases.

When towns established upon unsurveyed lands, extension limits, how adjusted.
1 July, 1864, c. 205, s. 3, v. 13, p. 344.

SEC. 2384. If within twelve months from the establishment of a town or city on the public domain the parties interested refuse or fail to file in the General Land Office a transcript map, with the statement and testimony called for by the provisions of section twenty-three hundred and eighty-two, it may be lawful for the Secretary of the Interior to cause a survey and plat to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by such provisions, with this exception, that they shall each be at an increase of fifty per centum on the minimum of ten dollars per lot.

When transcript maps of town are not filed in twelve months, proceedings by Secretary of the Interior.
1 July, 1864, c. 205, s. 4, v. 13, p. 344.

SEC. 2385. In the case of any city or town, in which the lots may be variant as to size from the limitation fixed in section twenty-three hundred and eighty-two, and in which the lots and buildings, as municipal improvements, cover an area greater than six hundred and forty acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim under the provisions of that section; but the minimum price of each lot in such city or town, which may contain a greater number of square feet than the maximum named in that section, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish.

When size of lots or town plat vary from general rule.
3 March, 1865, c. 107, s. 2, v. 13, p. 530.

SEC. 2386. Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town-lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

Title to lots subject to mineral rights.
3 March, 1865, c. 107, s. 2, v. 13, p. 530.

SEC. 2387. Whenever any portion of the public lands have been or may be settled upon and occupied as a town-site, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county

Entry of town authorities in trust for occupants.
2 March, 1867, c. 177, v. 14, p. 541.

in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the state or territory in which the same may be situated.

SEC. 2388. The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a town-site shall be filed with the register of the proper land office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town and the title to which is in the United States; but in any territory in which a land office may not have been established, such declaratory statements may be filed with the surveyor-general of the surveying district in which the lands are situated, who shall transmit the same to the General Land Office.

SEC. 2389. If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands authorized by law; and where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed.

* * * * *

SEC. 2391. Any act of the trustees not made in conformity to the regulations alluded to in section twenty-three hundred and eighty-seven shall be void.

Certain acts of trustees to be void.
2 March, 1867, c. 177, v. 14, p. 541.

SEC. 2392. No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnamon, or copper, or to any valid mining-claim or possession held under existing laws.

No title acquired to gold mines, &c., or to mining claims, &c.
2 March, 1867, c. 177, c. 53, v. 15, p. 67.

SEC. 2393. The provisions of this chapter shall not apply to military or other reservations heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the Land Office by title derived from the Crown of Spain, or otherwise.

Military or other reservations, &c.
2 March, 1867, c. 177, v. 14, p. 541.

SEC. 2394. The inhabitants of any town located on the public lands may avail themselves, if the town authorities choose to do so, of the provisions of sections twenty-three hundred and eighty-seven, twenty-three hundred and eighty-eight, and twenty-three hundred and eighty-nine; and, in addition to the minimum price of the lands embraced

Inhabitants of towns on public lands, right of, to enter.
8 June, 1868, c. 53, v. 15, p. 67.

ng any town-site so entered, there shall be paid by the parties availing themselves of such provisions all costs of surveying and platting any such town site, and expenses incident thereto incurred by the United States, before any patent issues therefor; but nothing contained in the sections herein cited shall prevent the issuance of patents to persons who have made or may hereafter make entries, and elect to proceed under other laws relative to town-sites in this chapter set forth.

AN ACT respecting the limits of reservations for town-sites upon the public domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the existence or incorporation of any town upon the public lands of the United States shall not be held to exclude from pre-emption or homestead entry a greater quantity than twenty-five hundred and sixty acres of land, or the maximum area which may be entered as a town-site under existing laws, unless the entire tract claimed or incorporated as such town-site shall, including and in excess of the area above specified, be actually settled upon, inhabited, improved, and used for business and municipal purposes.

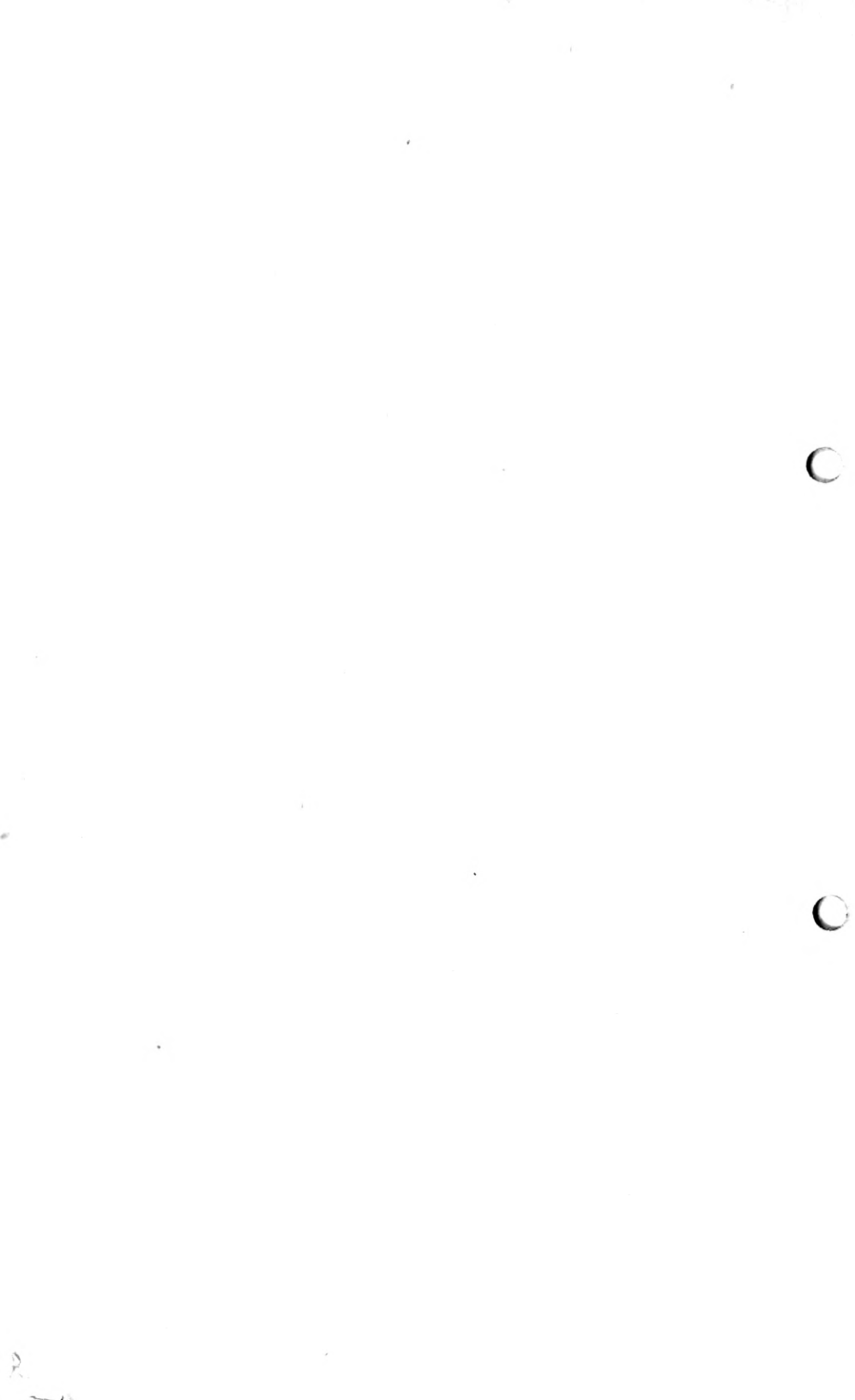
SEC. 2. That where entries have been heretofore allowed upon lands afterward ascertained to have been embraced in the corporate limits of any town, but which entries are or shall be shown, to the satisfaction of the Commissioner of the General Land Office, to include only vacant unoccupied lands of the United States, not settled upon or used for municipal purposes, nor devoted to any public use of such town, said entries, if regular in all respects, are hereby confirmed, and may be carried into patent: *Provided*, That this confirmation shall not operate to restrict the entry of any town-site to a smaller area than the maximum quantity of land which, by reason of present population, it may be entitled to enter under section twenty-three hundred and eighty-nine of the Revised Statutes.

SEC. 3. That whenever the corporate limits of any town upon the public domain are shown or alleged to include lands in excess of the maximum area specified in section one of this act, the Commissioner of the General Land Office may require the authorities of such town, and it shall be lawful for them, to elect what portion of said lands, in compact form and embracing the actual site of the municipal occupation and improvement, shall be withheld from pre-emption and homestead entry; and thereafter the residue of such lands shall be open to disposal under the homestead and pre-emption laws. And upon default of said town authorities to make such selection within sixty days after notification by the Commissioner, he may direct testimony respecting the actual location and extent of said improvements to be taken by the register and receiver of the district in which such town may be situated; and upon receipt of the same he may determine and set off the proper site, according to section one of this act, and declare the remaining lands open to settlement and entry under the homestead and pre-emption laws; and it shall be the duty of the secretary of each of the territories of the United States to furnish the surveyor-general of the territory, for the use of the United States, a copy duly certified of every act of the legislature of the territory incorporating any city or town, the same to be forwarded by such secretary to the surveyor-general within one month from date of its approval.

SEC. 4. It shall be lawful for any town which has made, or may hereafter make, entry of less than the maximum quantity of land named in section twenty-three hundred and eighty-nine of the Revised Statutes to make such additional entry, or entries, of contiguous tracts, which may be occupied for town purposes, as when added to the entry or entries theretofore made will not exceed twenty-five hundred and sixty acres: *Provided*, That such additional entry shall not together with all prior entries be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population, as prescribed in said section twenty-three hundred and eighty-nine.

Approved March 3, 1877.





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